

## **M e m o r a n d u m**

Date: March 9, 1999

To: CALFED Policy Group

From: Lester A. Snow



Subject: Endowments for Long Term Operations and Maintenance of Category Three Projects

### **Summary**

The state General Obligation Bond Law and federal Internal Revenue Code limit the use of state bond funds to pay for long-term activities necessary for ecosystem restoration actions on properties acquired with CALFED funds (i.e., long-term maintenance of a capital asset).

### **Detailed Discussion**

As presented to the Small Group in January, legal limitations require that only private entities, such as non-profit organizations, or federal agencies, can use Prop. 204 funds to establish endowments to pay for long-term actions necessary for ecosystem restoration on acquired properties. State agencies cannot receive Prop. 204 funds to establish endowments. Further, state agencies cannot receive the benefit of endowments established with Prop. 204 funds, even if the endowment is established by a non-state entity.

The limitations on the use of Prop. 204 funds raise the following policy issues:

- The principal of an endowment cannot be returned to the State. Any funds allocated to a private party or federal agency to establish an endowment are sunk costs. CALFED cannot require that the principal be returned to the State at any time or under any circumstances.

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#### **CALFED Agencies**

**California** The Resources Agency  
Department of Fish and Game  
Department of Water Resources  
California Environmental Protection Agency  
State Water Resources Control Board

**Federal** Environmental Protection Agency  
Department of the Interior  
Fish and Wildlife Service  
Bureau of Reclamation  
U.S. Army Corps of Engineers

Department of Agriculture  
Natural Resources Conservation Service  
Department of Commerce  
National Marine Fisheries Service

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- Income from an endowment cannot be returned to the State. If an endowment creates surplus beyond what is required for restoration activities necessary for ecosystem restoration actions on the acquired properties, the surplus cannot revert to CALFED or a state agency.
- If the entity acquiring the property transfers ownership to a state agency, there can be no obligation that income from the endowment be used to pay for long-term restoration activities on the transferred property once it is in state hands. The endowment would no longer serve its purpose if a private entity intends to transfer acquired properties back to a state agency.
- Due to legal limitations on the timing of spending bond funds, there is no clear method of creating long-term contractual obligations with fund recipients for ongoing oversight of how endowment funds are spent to enhance acquired properties.

Based on advice from the Solicitor's Office, federal funds authorized in the Bay-Delta Act cannot be used to establish endowment accounts.

The CALFED Policy Group previously approved two projects which included acquisition of property and an associated endowment to support long-term operations and maintenance. One of these projects has been contracted with the endowment deleted from the project with the project proponents support. The remaining project is unresolved relative to the endowment issue, with resolution required prior to executing the contract.

**Action**

The CALFED Policy Group directs that for projects that are approved in the future, funds acquired for the purpose of ecosystem restoration under the CALFED Program shall not be used to establish endowment accounts to fund long-term actions necessary for ecosystem restoration for properties acquired under the CALFED Program.